



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3089

by Rep. Peter Breen

SYNOPSIS AS INTRODUCED:

735 ILCS 110/5
735 ILCS 110/10
735 ILCS 110/15
735 ILCS 110/20
735 ILCS 110/25

Amends the Citizen Participation Act. Makes changes in the Section concerning public policy. Changes the definition of "motion". Provides that the Act applies to a motion that is made in response to a claim that is meritless and retaliatory. Provides that a claim is meritless if it lacks an essential element of the claim or fails against a reasonably foreseeable affirmative defense to that claim. Provides that a plaintiff's claim is presumed to be retaliatory if the alleged basis for the claim is an act in furtherance of the constitutional rights to petition, speech, association, and participation in government. Provides that a motion under the Act may be made as a motion to dismiss or as a motion for summary judgment or joined with other motions. Makes other changes in the Section concerning motion procedure and standards. Provides that "attorney's fees and costs" include reasonable trial and appellate attorney's fees and costs incurred in connection with a motion under the Act, including, but not limited to, fees and costs for discovery that relates to such a motion.

LRB099 06486 HEP 30994 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Citizen Participation Act is amended by
5 changing Sections 5, 10, 15, 20, and 25 as follows:

6 (735 ILCS 110/5)

7 Sec. 5. Public policy. Pursuant to the fundamental
8 philosophy of the American constitutional form of government,
9 it is declared to be the public policy of the State of Illinois
10 that the constitutional rights of citizens and organizations to
11 be involved and participate freely in the process of government
12 must be encouraged and safeguarded with great diligence. The
13 information, reports, opinions, claims, arguments, and other
14 expressions provided by citizens are vital to effective law
15 enforcement, the operation of government, the making of public
16 policy and decisions, and the continuation of representative
17 democracy. The laws, courts, and other agencies of this State
18 must provide the utmost protection for the free exercise of
19 these rights of petition, speech, association, and government
20 participation.

21 Civil actions for money damages have been filed against
22 citizens and organizations of this State as a result of their
23 valid exercise of their constitutional rights to petition,

1 speak freely, associate freely, and otherwise participate in
2 and communicate with government. There has been a disturbing
3 increase in lawsuits termed "Strategic Lawsuits Against Public
4 Participation" in government or "SLAPPs" as they are popularly
5 called.

6 The threat of SLAPPs significantly chills and diminishes
7 citizen participation in government, voluntary public service,
8 and the exercise of these important constitutional rights. This
9 abuse of the judicial process can and has been used as a means
10 of intimidating, harassing, or punishing citizens and
11 organizations for involving themselves in public affairs.

12 It is in the public interest and it is the purpose of this
13 Act to strike a balance between the rights of persons to file
14 lawsuits for injury and the constitutional rights of persons to
15 petition, speak freely, associate freely, and otherwise
16 participate in government; to protect and encourage public
17 participation in government to the maximum extent permitted by
18 law; to establish an efficient process for identification and
19 adjudication of SLAPPs; to identify and provide a speedy
20 resolution of meritless, retaliatory claims; and to provide
21 damages in the form of ~~for~~ attorney's fees and costs to
22 prevailing movants.

23 (Source: P.A. 95-506, eff. 8-28-07.)

24 (735 ILCS 110/10)

25 Sec. 10. Definitions. In this Act:

1 "Government" includes a branch, department, agency,
2 instrumentality, official, employee, agent, or other person
3 acting under color of law of the United States, a state, a
4 subdivision of a state, or another public authority including
5 the electorate.

6 "Person" includes any individual, corporation,
7 association, organization, partnership, 2 or more persons
8 having a joint or common interest, or other legal entity.

9 "Judicial claim" or "claim" include any lawsuit, cause of
10 action, claim, cross-claim, counterclaim, or other judicial
11 pleading or filing alleging injury.

12 "Motion" includes any motion to dismiss, for summary
13 judgment, or to strike, or any other judicial pleading filed to
14 dispose of a judicial claim, made prior to filing an answer to
15 the judicial claim.

16 "Moving party" means any person on whose behalf a motion
17 described in subsection (a) of Section 20 is filed seeking
18 dismissal of a judicial claim.

19 "Responding party" means any person against whom a motion
20 described in subsection (a) of Section 20 is filed.

21 (Source: P.A. 95-506, eff. 8-28-07.)

22 (735 ILCS 110/15)

23 Sec. 15. Applicability. This Act applies to any motion to
24 dispose of a meritless, retaliatory claim in a judicial
25 proceeding on the grounds that the claim is based on, relates

1 to, or is in response to any act or acts of the moving party in
2 furtherance of the moving party's rights of petition, speech,
3 association, or to otherwise participate in government.

4 A claim is meritless if it lacks an essential element of
5 the claim or fails against a reasonably foreseeable affirmative
6 defense to that claim. A claim shall be presumed retaliatory if
7 the alleged act or acts forming the basis of the claim are or
8 would be in furtherance of the constitutional rights to
9 petition, speech, association, and participation in
10 government.

11 Acts in furtherance of the constitutional rights to
12 petition, speech, association, and participation in government
13 are immune from liability, regardless of intent or purpose,
14 except when not genuinely aimed at procuring favorable
15 government action, result, or outcome.

16 (Source: P.A. 95-506, eff. 8-28-07.)

17 (735 ILCS 110/20)

18 Sec. 20. Motion procedure and standards.

19 (a) On the filing of any motion as described in Section 15,
20 a hearing and decision on the motion must occur within 90 days
21 after notice of the motion is given to the respondent. An
22 appellate court shall expedite any appeal or other writ,
23 whether interlocutory or not, from a trial court order denying
24 that motion or from a trial court's failure to rule on that
25 motion within 90 days after that trial court order or failure

1 to rule.

2 (b) Discovery shall be suspended pending a decision on the
3 motion. However, discovery may be taken, upon leave of court
4 for good cause shown, on the issue of whether the movants acts
5 are not immunized from, or are not in furtherance of acts
6 immunized from, liability by this Act.

7 (c) The court shall grant the motion and dismiss the
8 judicial claim unless the court finds that the responding party
9 has produced clear and convincing evidence that the acts of the
10 moving party are not immunized from, or are not in furtherance
11 of acts immunized from, liability by this Act.

12 (d) A motion described in Section 15 may be made under
13 Section 2-615, 2-619, 2-619.1, or 2-1005 of the Code of Civil
14 Procedure or similar provisions of federal or other states'
15 laws and rules. A motion made under Section 2-619 of the Code
16 of Civil Procedure may place in dispute, by affidavits and
17 other proof, any allegation pled in support of a claim.

18 (Source: P.A. 95-506, eff. 8-28-07.)

19 (735 ILCS 110/25)

20 Sec. 25. Attorney's fees and costs. The court shall award a
21 moving party who prevails in a motion under this Act reasonable
22 attorney's fees and costs incurred in connection with the
23 motion. As used in this Section, "attorney's fees and costs"
24 include reasonable trial and appellate attorney's fees and
25 costs incurred in connection with a motion under this Act,

1 including, but not limited to, fees and costs for discovery
2 that relates to a motion under this Act.

3 (Source: P.A. 95-506, eff. 8-28-07.)